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NO. 82-1889

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

SPRINGFIELD TOWNSHIP SCHOOL DISTRICT, a Political Subdivision of the Commonwealth of Pennsylvania; ROMAN, LOUIS A., Superintendent, Springfield Township School District; LAWN, JOHN J., HANSHAW, MARIE M., COMMINS, JAMES A., GORDEN, SARA LEE, HOCK, JR., WILLIAM C. HOGUE, JR., E. BURKE, KALISH, SALLY, LIEBERMAN, MAX L. and TORBIN, HARPUR M., Individually and as Members of the Board of School Directors, Springfield Township School District,

Petitioners

vs.

KNOLL, MADELIN H.,

Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF AMICI CURIAE ON BEHALF OF PENNSYLVANIA, HAWAII, KANSAS, MISSOURI, NEBRASKA, NEW HAMPSHIRE, NORTH CAROLINA, AND OHIO IN SUPPORT OF PETITIONERS

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STATEMENT OF QUESTION PRESENTED FOR REVIEW

Whether the Court of Appeals erred in holding that Pennsylvania's six-month statute of limitations for actions against public officials may not be borrowed for purposes of civil rights actions because the state statute of limitations is too short and, therefore, inherently conflicts with the policies underlying the civil rights statutes?

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STATUTES INVOLVED

Section 1 of the Civil Rights Act of 1871, as amended, 42 U.S.C. Section 1983, provides as follows:

> Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable, in equity, or other proper proceeding for redress.

42 U.S.C. Section 1988, provides, in pertinent part, as follows:

> The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be

exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

Section 5522 (b)(1) of the Pennsylvania Judicial Code, 42 Pa. Cons. Stat. §5522 (b)(1), provides as follows:

(b) Commencement of Action Required - the following actions and proceedings must be commenced within six months:

(1) An action against any officer of any government unit for anything done in the execution of his office, except an action subject to another limitation specified in this subchapter.

INTEREST OF THE AMICI CURIAE

This case presents the question whether a federal court properly may reject application of a state statute of limitations, which it is required to borrow for purposes of a civil rights action, because the court determines that the limitations period is too short. The decision of the Court of Appeals in this case, refusing to apply Pennsylvania's six-month statute of limitations to an employment discrimination claim brought pursuant to 42 U.S.C. §1983, will have a broad impact on the states joining in this brief.

State officials are, perhaps, the most frequent defendants in federal civil rights actions. Although the civil rights statutes represent a strong federal policy to encourage

vindication of civil rights, Congress likewise has expressed the firm view that certain interstices in the civil rights scheme, including the prescription of limitations periods, are to be filled by application of state law. See 42 U.S.C. §1988. The amici have a substantial interest in the vindication of their delegated responsibility to choose generally applicable limitations for actions.

The Third Circuit's decision here, if permitted to stand, will have a considerable effect on amici. In addition to the Pennsylvania statute at issue here, there are a number of state statutes of limitations which are less than one year and which could be

applied to civil rights actions.[1] With respect to these statutes, the states have made carefully considered policy choices in balancing the interests of potential plaintiffs against the policy of repose. The Third Circuit's decision here undermines the states' ability to exercise the discretion accorded them by Congress to make these policy choices. For that reason, amici have a substantial interest in the resolution of this case.

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[1] See, e.g., ILL. REV. STAT. ch. 68 §7-102 and 103 (180-day limitation; civil rights violation); IND. CODE ANN. §34-416.5-7 (180-day limitation; political subdivision claim).

SUMMARY OF ARGUMENT

Pursuant to 42 U.S.C. §1988 and a long line of decisions of this Court, state statutes of limitations which would be applied to analogous actions in state court are binding rules of law in federal civil rights actions. Only if a state statute conflicts with the Constitution or the Civil Rights Acts may it be disregarded.

Both the District Court and the Court of Appeals properly concluded that Pennsylvania's six-month statute of limitations for actions against public officials (42 Pa. Cons. Stat. § 5522 (b)(1)) was the appropriate limitation for this employment discrimination action. But the Court of Appeals' conclusion that the statute could not apply because a six-month limitations period conflicts with the remedial purposes of 42 U.S.C. §1983 failed to take account of prior

decisions of this Court and Congressional action in related areas.

The policy of repose which statutes of limitations reflect has strong roots in the federal system. The Court routinely has utilized state limitations where no federal one is prescribed. This unbroken line of decision requires rejection of the state limitation only if it discriminates against federal rights or it is manifestly so unreasonably short as to amount to a denial of justice. Here there is no question of discrimination. Moreover, Congress and this Court have unhesitatingly applied six-month limitations to actions every bit as complex as a civil rights case.

A statute such as Section 1983 and a limitations period for bringing the action are inherently in conflict. The civil rights statute provides a

broad remedy and a limitations statute cuts off the remedy. But if the Court is to be faithful to its precedents and the Congressional direction embodied in 42 U.S.C. §1988, it must reverse the decision of the Court of Appeals and permit application to civil rights claims of Pennsylvania's six-month limitation.

ARGUMENT

PENNSYLVANIA'S SIX-MONTH STATUTE OF LIMITATIONS FOR ACTIONS AGAINST PUBLIC OFFICERS IS CONSISTENT WITH THE CIVIL RIGHTS STATUTES BECAUSE IT APPLIES GENERALLY TO STATE AND FEDERAL CAUSES OF ACTION AND IT GIVES PLAINTIFFS A REASONABLE TIME TO SUE.

The narrow question in this case is whether a federal court is required to reject the application of a state statute of limitations to a civil rights claim because, in the court's view, the limitations period is too short. The Court of Appeals in this case examined the basic policy underlying the civil rights statutes, which it found to be the creation of a supplementary federal remedy for state action infringing upon federally protected rights, and concluded that a relatively short statute of limitations conflicts with the "remedial spirit" of the Civil

Rights Acts. Pet. App.[2] A-9 - A-10. Because the court failed to accord state law the respect which Congress has mandated and, also, because the court thoroughly ignored the policies which support statutes of limitations generally (and Pennsylvania's six-month statute in particular), the reasoning of the Court of Appeals is flawed.

The civil rights statute at issue here, 42 U.S.C. §1983, has no statute of limitations. It is settled law that, pursuant to 42 U.S.C. §1988,[3] the federal courts will apply

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[2]"Pet. App." refers to the appendix to the petition for certiorari filed in this case.

[3]42 U.S.C. §1988 provides, in pertinent part, as follows:

> [I]n all cases where [the Civil Rights Acts] are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses

FOOTNOTE CONTINUED ON NEXT PAGE.

to §1983 claims "the state law of limitations governing an analogous cause of action." Board of Regents v. Tomanio, 446 U.S. 478, 483-484 (1980), quoted with approval in Burnett v. Grattan, No. 83-264 (June 27, 1984), slip op. at 7; see also Johnson v. Railway Express Agency, 421 U.S. 454, 469 (1975) ("that [statute of limitations] which the state would apply if the action had been brought in state court") (Marshall, J., concurring in part and dissenting in part). Here the Court of Appeals held, properly in our

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FOOTNOTE 3 CONTINUED

against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause.

view, that Pennsylvania's statute requiring that actions against public government officers be commenced within six months is the limitation statute which would be applied if the action were brought in state court.[4] Pet. App. A-8. The question then left for resolution is what the Court labelled in Burnett v. Grattan, supra, as the "third step" in the Section 1988 inquiry - whether the state rule is inconsistent with federal law. Slip op. at 6, 11 n.15.

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[4]Both generally as to questions of state law, and with respect to the particular task of choosing the applicable state statute of limitations, the Court has accepted the interpretation concurred in by a court of appeals and district court. Runyon v. McCrary, 427 U.S. 160, 181 (1976); Bishop v. Wood, 426 U.S. 341, 346, and n.10 (1976). Here, both courts below held that the six-month statute is the one a state court would apply if Knoll's claim had been filed there. Pet. App. A-8, A-27.

Of course, it is clear that Pennsylvania's statute does not directly conflict with the Civil Rights Acts, nor do we understand respondents to have asserted that the limitations statute is unconstitutional. But this is not the end of the inquiry. As the Court has repeatedly emphasized, a state statute will not be borrowed for purposes of the civil rights statutes if it is inconsistent with the policies underlying §1983. See, e.g., Board of Regents v. Tomanio, supra, 446 U.S., at 487; Johnson v. Railway Express Agency, supra, 421 U.S., at 465. "In order to gauge consistency, of course, the state and federal policies which the respective legislatures sought to foster must be identified and compared." Board of Regents v. Tomanio, supra, 446 U.S., at 487.

Statutes of limitations are statutes of repose. They "inevitably reflect a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." Johnson v. Railway Express Agency, supra, 421 U.S., at 463-464. The passage of time after the events giving rise to the cause of action necessarily affects adversely the reliability of the fact-finding process and creates settled expectations. Board of Regents v. Tomanio, supra, 446 U.S., at 487.

Pennsylvania's statute prescribing a relatively short limitations period for actions against public officers reflects the legislature's judgment that the policies of safeguarding

the efficacy of the fact-finding process and precluding the overturning of settled expectations are of particular importance for public officers.[5] Perhaps more than in any other endeavor, government has a constantly changing face. Public officers frequently have all too brief tenures before they move on to another government post or into the private sector. These changes in the policy-making positions in government, moreover, often are the result of philosophical rifts or changes in political party domination. The net result of this process is that circum-

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[5]That the statute is premised on the policies outlined in the text, and not on the general policy of protecting the government from stale claims, is underscored by the fact that the six-month limitation applies to officers, but not to government entities.

stances often change dramatically in government in a short period of time. Public officers depart the scene taking with them both their knowledge of the relevant facts and their incentive for cooperating in assisting the government's defense.

Moreover, this Court has stressed "[t]he importance of policies of repose in the federal, as well as in the state system." Board of Regents v. Tomanio, supra, 446 U.S., at 488. The strength of this federal policy is reflected in this Court's repeated application of state limitations periods to federal claims, even federal claims over which federal court jurisdiction is exclusive. See, e.g., Auto Workers v. Hoosier Corp., 383 U.S. 696 (1966) (Labor Management Relations Act); Chattanooga Foundry v. Atlanta, 203 U.S. 390 (1906) (Sherman Act);

Campbell v. Haverhill, 155 U.S. 610 (1895) (Patent Act); see also Adams v. Woods, 6 U.S. (2 Cranch) 336, 342 (1805) (the absence of a statute of limitations "would be utterly repugnant to the genius of our laws.").

The Court has identified the "two principal policies embodied in §1983 as deterrence and compensation." Board of Regents v. Tomanio, supra, 446 U.S., at 488. To paraphrase the Court in Tomanio, these policies are not undermined by the rule at issue here for plaintiffs can secure damages, "thereby recovering compensation and fostering deterrence" if they merely file suit within the limitations period. 446 U.S., at 488.

Admittedly, it is tempting to conclude, as did the Court of Appeals here, that the policies of deterrence and compensation will be best served by

applying to civil rights actions the most generous state limitations period. But this approach fails for a number of reasons. First, this Court has rejected the proposition that the state rule most consistent with the Civil Rights Acts always is that rule which is most favorable to the plaintiff.

> A state statute cannot be considered "inconsistent" with federal law merely because the statute causes the plaintiff to lose the litigation. If success of the §1983 action were the only benchmark, there would be no reason at all to look to state law, for the appropriate rule would then always be the one favoring the plaintiff, and its source would be essentially irrelevant. But §1988 quite clearly instructs us to refer to state statutes; it does not say that state law is to be accepted or rejected based solely on which side is advantaged thereby.

Robertson v. Wegmann, 436 U.S. 584, 593 (1978).

Secondly, in the somewhat analogous context of qualified immunity

for public officials, the Court has not hesitated to apply to civil rights cases the common law rule granting immunity from damages to government officials exercising discretionary functions. See Scheuer v. Rhodes, 416 U.S. 232 (1974); Pierson v. Ray, 386 U.S. 547 (1967). Viewing the matter essentially as one of statutory construction, the Court found "no clear indication that Congress [in enacting §1983] meant to abolish wholesale all common-law immunities." Pierson v. Ray, supra, 386 U.S., at 554. So despite the fact that qualified immunity defeats even the most timely-filed and meritorious action for damages, the Court has found that the policies expressed in the immunity doctrine - "the injustice of subjecting to liability [public officials who must] . . . exercise discretion" and

the risk that potential liability will deter swift action - although obviously to some degree in conflict with the policies of compensation and deterrence, nevertheless outweigh those interests. Similar considerations apply here.

We have outlined above the strong policies of repose both state and federal, which support application of state statutes of limitations where no federal limitation is prescribed. The Court recognized and applied to federal claims the rule of repose long before enactment of the civil rights statutes. See cases collected in Bauserman v. Blunt, 147 U.S. 647, 652-653 (1893). Much like its conclusion with respect to qualified immunity for state officials, the historical application of state limitations to federal claims led inexorably to the conclusion that, in

the face of Congressional silence, there is nothing "peculiar to a federal civil rights action that would justify special reluctance in applying state law." Johnson v. Railway Express Agency, supra, 421 U.S., at 464. See also Runyon v. McCrary, 427 U.S. 160, 180 (1976) (silence of Congress interpreted as adopting federal policy to apply state limitations).

We recognize that this "borrowing rule" necessarily is limited by the Section 1988 command that a "borrowed" rule not be inconsistent with federal law. Prior decisions of this Court give some guidance for resolution of the consistency question raised in this case. In Campbell v. Haverhill, 155 U.S. 610 (1895) the Court confronted the question whether state limitations may apply to patent actions. In holding that the state

rules apply to those exclusively federal claims, the Court's holding was not unqualified - state statutes of limitations which discriminate against federal claims or which fail to provide a reasonable time for commencement of the action will not be applied. Id., at 615. Recently in dictum, the Court has reiterated the principles of Campbell in the context of civil rights claims. See Burnett v. Grattan, supra, slip op. at 11, n.15 (majority opinion); 18 (Rehnquist, J., concurring in the judgment). It is clear in this case that Pennsylvania's limitations statute evidences no hostility to federal rights - it applies equally to federal and state law claims against public officers. Both courts below specifically held that the statute would be applied to a state law claim brought in state court. Pet. App. A-8,

A-27. The remaining question then is whether the statute prescribes a limitation period which is unreasonable.

Again, in answering this question we have the benefit of guidance from prior decisions by the Court. When borrowing a particular state limitations period "a federal court is relying upon the State's wisdom," Johnson v. Railway Express Agency, supra, 421 U.S., at 464, in weighing "the burdens borne by the parties to a suit of that sort." Burnett v. Grattan, supra, slip op. at 9. Justice Holmes, in another context, properly expressed the limited role of the courts in assessing the legitimacy of legislative line-drawing:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to

> be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself, without regard to the necessity behind it, the line or point seems arbitrary. It might as well, or nearly as well, be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the legislature must be accepted unless we can say that it is very wide of any reasonable mark.

Louisville Gas & Electric Co. v. Coleman, 277 U.S. 32, 41 (1928) (concurring opinion). More specifically, with regard to the standard for review of a legislature's choice of a limitations period, the Court had this to say:

> "[W]hat shall be considered a reasonable time must be settled by the judgment of the legislature, and the courts will not inquire into the wisdom of its decision in establishing the period of legal bar, unless the time allowed is manifestly so insufficient that the statute becomes a denial of justice."

Texaco, Inc. v. Short, 454 U.S. 516, 527, n.21, (1982) quoting Wilson v. Iseminger, 185 U.S. 55, 63 (1902). See also Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945)(statute of limitations "subject to a relatively large degree of legislative control").

The Court's decision just last term in Burnett v. Grattan, supra, is consistent with our analysis here. The question in Burnett was whether a state administrative statute of limitations was an appropriate limitation for a federal civil rights action. Slip op. at 1. In concluding that it was not, the Court relied upon the "functional differences" between the state administrative mechanism and federal civil rights actions - civil rights actions are enforceable in court and are broad in their coverage, while the state

proceeding was of a more informal nature and covered only a narrow range of conduct. Slip op. at 7-9. The Court noted that a statute of limitations reflects a legislative weighing of the various, sometimes conflicting, policies which underly the cause of action on one hand and the limitations period on the other. Slip op. at 9-10. The Maryland statute examined in Burnett was not appropriate for application to a federal civil rights action because, as a unanimous Court concluded, it did not represent a legislative weighing of the burdens of preparing for in-court litigation. Slip op. at 9-10 (majority opinion); 14 (Powell, J., concurring in the judgment); 20-21 (Rehnquist, J., joined by Burger, C.J., and O'Connor, J., concurring in the judgment).

Although it is clear that the Court in Burnett was not presented with the precise question raised in this case (slip op. at 11, n.15), it is equally apparent that respondents will rely on the Court's discussion of the "practicalities"[6] of civil rights litigation to support their position here. But the issue of "practicalities" is presented here, if at all, in a light entirely different than in Burnett. Here the legislature, having

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[6]We agree with Justice Rehnquist's observation concurring in Burnett (slip op. at 16) and Judge Adams' statement dissenting from the denial of rehearing in banc in this case (Pet. App. A-34-A35) that the practicalities of filing a federal court complaint are hardly staggering. Federal pleading rules are far from stringent, see Fed. R.Civ. P. 8(a), and the day long since has passed when the average person was unaware that the federal courts had the power to grant relief on the broad range of claims falling within the protection of the civil rights laws.

specifically weighed the burdens imposed upon plaintiffs, has made the considered judgment that suits should be filed within six months. In the long line of decisions of this Court referred to earlier, the Court without deviation has adhered to the principle that a state statute of limitations will be disregarded by the Court only if it is manifestly so unreasonable as to amount to a denial of justice. As we demonstrate below, Pennsylvania's statute passes this test.

The Court of Appeals theorized that six months simply is too short a time period in which to expect that a plaintiff can realize that he or she has been deprived of a constitutional right, consult a lawyer, and file a claim. Pet. App. A-10. In so doing the court ignored the fact that Congress itself has prescribed

six-month limitations periods for commencement of actions every bit as complex as civil rights claims. See, e.g., 42 U.S.C. §2000e-5(e) (employment discrimination); 42 U.S.C. §3610(b)- (housing discrimination). Clearly, "[t]he reasonableness [of the State's] approach is suggested by the fact that several federal statutes [cited above]. . . take the same approach. . . ." Robertson v. Wegmann, supra, 436 U.S., at 592, n.9. Furthermore, this Court recently borrowed a six-month limitation from federal law for purposes of a suit by a union member against both the employer and the employe's union. Del Costello v. International Brotherhood of Teamsters, No. 812386 (June 8, 1983); see also United Parcel Service, Inc. v. Mitchell, 451 U.S. 56 (1981) (applying 90-day state statute of limitations to action by union member

against his employer). Finally, in a variety of contexts the Court has rejected challenges to statutes of limitations of less than one-year. See Turner v. New York, 168 U.S. 90 (1897)(six months); Mills v. Scott, 99 U.S. 25 (1878) (nine months and fifteen days); Terry v. Anderson, 95 U.S. 628 (1877) (same).

At bottom, the Court of Appeals' conclusion that six months is too short a time period for the average plaintiff to recognize a constitutional violation and file a claim rests on no more than unsupported guesswork. Certainly, as we have demonstrated above, six months is not, inherently, an unreasonable limitation - at least in the judgment of Congress and this Court. The Pennsylvania Legislature carefully weighed the relative policies in

deciding that six months was sufficient time for a plaintiff to press a claim. And it cannot be overlooked with respect to the practicalities of litigation which so swayed the Court of Appeals that Pennsylvania law requires fact pleading which imposes a much greater burden on plaintiffs than does federal notice pleading.[7] Compare Pa. R.Civ. P. 1019(a) and General State Authority v. Lawrie & Green, 24 Pa. Commonwealth Ct. 407, 356 A.2d 851 (1976), with Fed.R.Civ.P. 8(a) and

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[7]The Court of Appeals' concern for uniformity (Pet. App. A-12 - A-14) was misplaced. This Court has held squarely and repeatedly that concerns of uniformity, while a strong federal policy in certain contexts, are not sufficient to displace state statutes of limitations. Burnett v. Grattan, supra, slip op. at 10, n.14; Board of Regents v. Tomanio, supra, 446 U.S., at 489; Robertson v. Wegmann, supra, 436 U.S., at 594, n.11.

Conley v. Gibson, 355 U.S. 41, 47 (1958).

In focusing solely on the remedial policies of 1983, the Court of Appeals not only ignored the significant policies advanced by statutes of limitations; it also failed to recognize and give weight to the policies underlying the borrowing provisions of Section 1988. That provision reflects the Congressional judgment that generally applicable state rules necessary to fill the interstices in federal law must be applied absent a manifest conflict with federal law. This is precisely the impact of the Court's statement in Tomanio, "In most cases, [state rules] are binding rules of law." 446 U.S., at 484. As applied to this particular case, Section 1988 compels the conclusion that Pennsylvania's six-month

statute of limitations is a binding rule of law. It is concededly applicable to this cause of action; it applies uniformly to state and federal claims; and, it is not manifestly so unreasonably short as to amount to a denial of justice.

CONCLUSION

The judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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